



S.A.(MD)No.109 of 2024

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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD)Nos.109 and 110 of 2024

and

C.M.P.(MD)Nos.2778 to 2780 of 2024

S.A.(MD)No.109 of 2024

R.Seenivasan

... Appellant

/Vs./

R.Venkitasamy (died)

1. V.Premkumar

2. Minor Abarna

3. Minor Gayathri

*(Minors /respondents 2 and 3 rep. through their mother
Sathya/7th respondent herein)*

4. G.Jeyalakshmi

5. Thayammal,

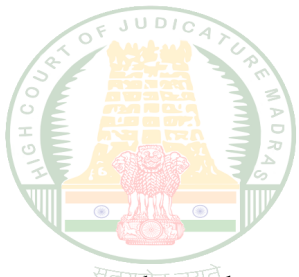
6. Minor Balaji

*(Minor /respondent 6 rep. Through his mother
Thayammal 5th respondent herein)*

7. Sathaya

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside against the Judgment and Decree, dated 29.10.2012, made in A.S.No.26 of 2010 on the file of Sub Court, Theni, by reversing the Judgment and Decree of the trial Court in O.S.No.2 of 2005, dated 29.09.2009, on the file of District Munsif Court,



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Bodinyakanur and to allow the Second Appeal.

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For Appellant : M/S.Lakshmi Gopinathan
for Mr.M.Prabu
For R1 & R4 : Mr.R.Suriyanarayanan
For R5 : No appearance
R7 : Deceased

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R.Seenivasan

... Appellant

/Vs./

R.Venkitasamy (died)

1. V.Premkumar

2. Minor Abarna

3. Minor Gayathri

(Minors /respondents 2 and 3 rep. through their mother
Sathya/4th respondent herein)

4. Sathya,

5. G.Jeyalakshmi

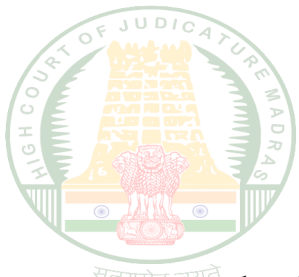
6. Thayammal,

7. Minor Balaji

(Minor rep through his mother Thayammal/6th Respondent)

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside against the Judgment and Decree, dated 29.10.2012, made in A.S.No.104 of



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2009 on the file of Sub Court, Theni, by modifying the Judgment and Decree of the trial Court in O.S.No.2 of 2005, dated 29.09.2009, on the file of District Munsif Court, Bodinyakanur and to allow the Second Appeal.

For Appellant : M/S.Lakshmi Gopinathan
for Mr.M.Prabu
For R1 & R5 : Mr.R.Suriyanarayanan

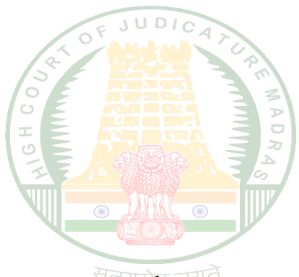
COMMON JUDGMENT

Both the second appeals are arising out of common issue and common judgment passed in O.S.No.2 of 2005, hence both the second appeals are taken up together and common judgement is passed.

2.(i) The second appeal in S.A.No.109 of 2024 is filed by the first defendant in the suit to set aside the Judgment and Decree, dated 29.10.2012, passed in A.S.No.26 of 2010 on the file of Sub Court, Theni, by modifying the Judgment and Decree dated 29.09.2009 passed in O.S.No.2 of 2005, on the file of District Munsif Court, Bodinyakanur.

2.(ii) The second appeal in S.A.No.110 of 2024 is filed by the first defendant in the suit to set aside the Judgment and Decree, dated 29.10.2012, passed in A.S.No. 104 of 2010 on the file of Sub Court, Theni, by modifying the Judgment and Decree dated 29.09.2009 passed in O.S.No.2 of 2005, on the file of District Munsif Court, Bodinyakanur.

3. The plaintiffs 2 to 4 are respondents 1 to 3 herein. The 1st plaintiff



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Venkitasamy died and his wife Sathya was impleaded as legal heir in the First Appeal stage and in the second appeal she is arrayed as 7th respondent. The first defendant is the appellant herein. The defendants 2 to 4 are respondents 4 to 6 herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiff and Defendants as per the ranking in the suit.

4. The plaintiffs 1 to 4 had filed a suit for partition in O.S.No.2 of 2005. The suit was decreed as far as the items 1, 2 and 4 are concerned, but the suit was dismissed as far as the items 3, 5, 6 and 7 are concerned. Aggrieved over that portion of the judgment in O.S.No.2 of 2005 wherein the partition was declined to items 3,5,6 and 7, the plaintiffs had preferred First Appeal in A.S.No.104 of 2010 and the same was allowed. Aggrieved over the same, the 1st defendant has preferred the second appeal in S.A.(MD)No.110 of 2024. The 1st defendant was aggrieved over that portion the judgment in O.S.No.2 of 2005 wherein the partition judgment wherein it is held the items 1,2 and 4 are ancestral and they are liable for partition, the 1st defendant had preferred A.S.No.26 of 2010 and the same was partially allowed wherein the 1st defendant was granted 1/5th share instead of 1/4th share in items 1, 2 and 4 of the suit properties. Aggrieved over the same, the 1st defendant has preferred the second appeal in S.A.(MD)No.109 of 2024.

5. The contention of the appellant / 1st defendant is that there are 7 items of

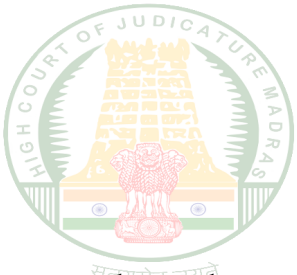


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suit property and the Trial Court has declared that item Nos.1, 2 and 4 as joint family property and all of them are entitled to $1/4^{\text{th}}$ share, which is being modified as $1/5^{\text{th}}$ share in the appeal. The Appellate Court had granted $1/5^{\text{th}}$ share to the plaintiffs, 2nd defendant Jayalakshmi $1/5^{\text{th}}$ share, defendants 3 & 4 is entitled to $1/5^{\text{th}}$ share of deceased Perumal Samy and the 1st defendant is entitled to $2/5^{\text{th}}$ share. The 1st defendant has not raised any legally sustainable ground to interfere in the shares allotted by the parties. Therefore, this Court is confirming that the both the plaintiff and the defendants are entitled to the share as stated above to the items 1,2 and 4 alone and the same is confirmed.

6. As far as the item No.7 is concerned, the contention of the appellant/1st defendant is that the said property was purchased by him through his own fund and also from the help of his father-in-law, hence it cannot be stated as joint family property. For which the appellant / 1st defendant is relying on the document Ex.B13 which is the sale deed wherein the 1st plaintiff's wife had purchased the property. In the said sale deed the eastern boundary is shown as 1st defendant property. The appellant court disbelieved the said statement, further held that the burden to prove that it is not the joint family is on the 1st defendant and not on the plaintiff. This Court is of the considered opinion that the initial burden is on the plaintiff to prove the same is purchased through the nucleus of the joint family property. Further

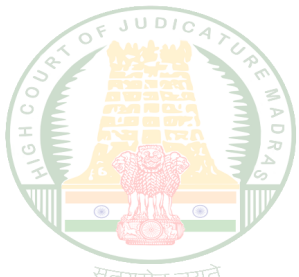


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when the Ex.B13 which is the sale deed of 1st plaintiff wife, shows that the 1st defendant property as eastern boundary, when the sale deed executed in the name of the 1st defendant, then burden is on the plaintiff to prove that the 1st defendant had purchased it from the nucleus of the joint family property. Further the 1st defendant Sreenivasan is not Kartha of the joint family. When the member is not Kartha but only a member of the joint family then any purchase by the member other than Kartha, then it cannot be presumed that the same is purchased from the nucleus of the joint family property. Such presumption is available if the Kartha had purchased the property. Therefore, this Court is of the considered opinion that the 7th item is self-acquired property of the 1st defendant and the same is not available for partition.

7. As far as item No.3 is concerned, the contention of the learned Counsel for the appellant/1st defendant is that the father of the appellant/first defendant sold the property to his brother. Subsequently, the father of the appellant/first defendant has re-purchased the said property. In such circumstances, item No.3 ought to be considered as joint family property. Therefore, the same is available for partition. But the share is 1/4th each.

8. As far as item Nos.5 and 6 are concerned, the contention of the 1st defendant is that he had put all his efforts to develop the land. And the plaintiffs and other



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parties were not available in the village and they have not put their labour for developing the agricultural land. Hence, they cannot claim partition to the said property. This Court is of the considered opinion such a plea cannot be sustained. If the 1st defendant had put extra labour in the said items 5 and 6, he may be entitled to some benefits. Therefore, this Court is of the considered opinion that as far as item Nos.5 and 6 are concerned, the same shall be divided 1/5th shares, wherein the plaintiffs are entitled to 1/5th share, 2nd defendant Jayalakshmi 1/5th share, defendants 3 & 4 is entitled to 1/5th share of deceased Perumal Samy and the 1st defendant is entitled to 2/5th share.

9. As far as the liability is concerned, the contention of the appellant/1st defendant is that it has to be shared among the parties and the learned Counsel for the first respondent vehemently opposed to the same. This Court is of the considered opinion that the liability ought to be shared equally among the parties. Instead of determining the liability in terms of shares this Court is fixing the liability as Rs.4,50,000/- (Rupees Four Lakhs Fifty Thousand only). The plaintiffs are liable to pay Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) to the appellant/1st defendant herein. The 2nd defendant is liable to pay Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) to the appellant/1st defendant herein. The 3rd and 4th defendants are liable to pay Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) to



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the appellant/1st defendant herein.

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10. Finally:

a. Both the second appeals in S.A.(MD)No.109 of 2024 and S.A.(MD)No.110 of 2024 are partly allowed.

(*)b. i. As far as the Item Nos.1, 2 and 4 are concerned, all the parties are entitled to divide the properties and the share of the properties are that the plaintiffs are entitled to 1/5th share, 2nd defendant Jayalakshmi 1/5th share, defendants 3 & 4 is entitled to 1/5th share of deceased Perumal Samy and the 1st defendant is entitled to 2/5th share. And to the extent the preliminary decree for partition and permanent injunction is passed.

(*)b. ii. As far as the Item No.3 is concerned all the parties are entitled to divide the properties and the share of the properties are that the plaintiffs are entitled to **(*) 1/4th** share, 2nd defendant Jayalakshmi **(*) 1/4th** share, defendants 3 & 4 is entitled to **(*) 1/4th** share of deceased Perumal Samy and the 1st defendant is entitled to **(*) 1/4th** share. And to the extent the preliminary decree for



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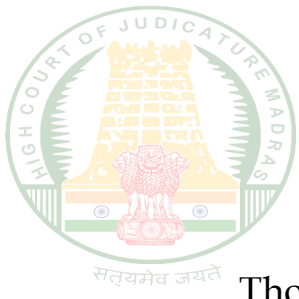
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partition and permanent injunction is passed.

c. As far as the Item Nos.5 and 6 are concerned all the parties are entitled to divide the properties and the share of the properties are that the plaintiffs are entitled to 1/5th share, 2nd defendant Jayalakshmi 1/5th share, defendants 3 & 4 is entitled to 1/5th share of deceased Perumal Samy and the 1st defendant is entitled to 2/5th share. And to the extent the preliminary decree for partition and permanent injunction is passed.

d. As far as the Item No.7 is concerned, it is the self-acquired property of the 1st defendant and the same is not available for partition. And both partition and permanent injunction is declined to the plaintiffs and other defendants.

e. As far as liability is concerned the same is fixed as Rs. 4,50,000/-. In the said liability the plaintiffs are liable to pay Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) to the appellant/1st defendant herein. The 2nd defendant is liable to pay Rs.1,50,000/- (Rupees One Lakh Fifty



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Thousand only) to the appellant/1st defendant herein. The 3rd and 4th defendants are liable to pay Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) to the appellant/1st defendant herein.

f. The mesne profits is directed to be decided on separate enquiry.

g. Time for partition is four months

11. With the above said direction, the Second Appeals in S.A.(MD)No.109 of 2024 and S.A.(MD)No.110 of 2024 are partially allowed to the extent stated supra. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

(*) Corrected as per the order of the Court dated 06/03/2025 made in S.A. (MD) Nos.109 and 110 of 2024 and C.M.P. (MD)Nos.2778 to 2780 of 2024

Sd/-

Assistant Registrar (CO)

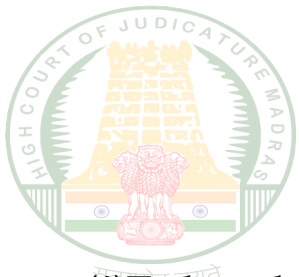
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/03/2025

Sub Assistant Registrar
(CS- I/ II / III / IV)

jbr

TO:



S.A.(MD)No.109 of 2024

(*)To be substituted to the order already despatched on 07/01/2025

1. The Judge, Sub Court, Theni

2. District Munsif, Bodinyakanur

3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.R.SURIYA NARAYANAN, Advocate (SR-17135[F] & 17136[F] dated 28/03/2024)

+1 CC to M/s.M.PRABU, Advocate (SR-17214[F] dated 01/04/2024)

+2 CC to M/s.K.SIVABALAN, Advocate (SR-17691[F] & 17692[F] dated 02/04/2024)

Judgment made in
S.A.(MD)Nos.109 & 110 of 2024
Dated:**28.03.2024**

KVL(03/01/2025) 11P/10C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023

KR/13.03.2025 11P/10C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023